worked the destruction of all legal vitality in the mortgage: *Armstrong* v. *Murphy*, 2 Ind. 601; *Sherman* v. *Sherman*, 3 Id. 337; *Ledyard* v. *Chapin*, 6 Id. 320; *Francis* v. *Porter*, 7 Id. 213; *Bickle* v. *Beseke*, 23 Id. 18; *Lynch* v. *Jennings*, 43 Id. 276; *Rose* v. *Duncan*, 49 Id. 269; *Roosevelt* v. *The Bull's Head Bank*, 45 Barb. 579.

We think a demand to cancel the mortgage, as a condition of the tender, is not different in principle from demanding a receipt as a condition to the payment of money.

It would be the duty of the appellants, after "having received full payment of the sum" secured by the mortgage, to "enter satisfaction on the margin or other proper place in the record of such mortgage," according to sect. 5, 2 Rev. Stats. 1876, p. 334; but they could not be required to do so, merely upon a tender of the amount, as a condition to their right to receive the money. The section cited would not bear such a construction.

The judgment, as to the costs below, is reversed, with costs here; cause remanded, with instructions to proceed according to this opinion.

ABSTRACTS OF RECENT DECISIONS.

ENGLISH COURTS OF LAW AND EQUITY.[1]
SUPREME COURT OF INDIANA.[2]
SUPREME COURT OF IOWA.[3]
SUPREME COURT OF THE UNITED STATES.[4]

ACTION.

Breach of Public Statutory Duty.—The mere fact that the breach of a public statutory duty has caused damage does not vest a right of action in the person suffering the damage against the person guilty of the breach; whether the breach does or does not give such right of action must depend upon the object and language of the particular statute: *Atkinson* v. *The Newcastle and Gateshead Waterworks Co.*, Law Rep. C. A., 2 Ex. D.

AGENT. See *Officer*.

Power to borrow Money—Persons dealing with Agent before Notice of recall of his Powers.—A general power to borrow money includes

[1] Selected from the late numbers of the Law Reports.

[2] From A. N. Martin, Esq., Reporter; to appear in 55 Indiana Reports.

[3] From John S. Runnells, Esq., Reporter; to appear in 44 Iowa Reports.

[4] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1877. The cases will probably be reported in 5 or 6 Otto.

authority to give to the render the ordinary securities for the sum borrowed. Among these are bonds, notes or acceptances, and collaterals: *Hatch* v. *Coddington*, S. C. U. S., Oct. Term 1877.

Persons who deal with an agent before notice of the recall of his powers are not affected by the recall: *Id.*

BAILMENT.

Deposit of Property in Cloak-Room — Ticket — Condition endorsed thereon—Knowledge of Condition by Depositor.—On the deposit of articles at the cloak-room at a railway station, a charge is made of 2*d.* for each, and the depositor receives a ticket, on the face of which are printed the times of opening and closing the cloak-room and the words "see back," and on the back there is a notice that the company will not be responsible for any package exceeding 10*l.* in value. A placard upon which is printed in legible characters the same condition is also hung up in the cloak-room. The plaintiff deposited his bag, of value exceeding 10*l.*, in the defendants' cloak-room, paid 2*d.* and received a ticket. The bag was lost or stolen. In an action to recover its value the plaintiff swore that he took the ticket without reading it, imagining it to be only a receipt for the money paid for the deposit of the article, or as evidence that the company had received the article, that he did not read the condition at the back of the ticket, nor did he see the notice hung up in the cloak-room, The judge left two questions to the jury, 1. Did the plaintiff read or was he aware of the special condition upon which the article was deposited? 2. Was the plaintiff, under the circumstances, under any obligation, in the exercise of * * * reasonable and proper caution, to read or to make himself aware of the condition? The jury answered both the questions in the negative, and judgment was directed for the plaintiff: *Held*, by MELLISH and BAGGALLAY, L. JJ., that there ought to be a new trial, on the ground that there had been a misdirection by the judge, inasmuch as the plaintiff could be under no obligation to read the condition; and that the second question left to the jury ought to have been, whether the company did that which was reasonably sufficient to give the plaintiff notice of the condition: *Held*, further, by BRAMWELL, L. J., that on the above facts, it was a question of law, and that judgment ought to be entered for the defendants: *Parker* v. *The South Eastern Railway Co.*; *Gabell* v. *The Same*, Law Rep. C. A., 2 C. P. D.

BANKRUPTCY.

Jurisdiction of State Courts—Duty of Assignee.—The courts of the United States do not have exclusive jurisdiction of suits for the settlement of conflicting claims to property belonging to the estate of a bankrupt, and an assignee in bankruptcy may sue in a state court to collect the assets. *McHenry et al.* v. *La Societe Francaise, &c.*, S. C. U. S., Oct. Term 1877.

If an assignee in bankruptcy submits himself to the jurisdiction of a state court in a suit affecting the estate which was pending when the proceedings in bankruptcy were commenced, he is bound by any judgment that may be rendered: *Id.*

The assignee is not required to take measures for the sale of mortgaged property unless its value is greater than the encumbrance. His duties

relate chiefly to unsecured creditors, and he need not trouble himself about encumbered property unless something may be realized out of it on their account, or unless it becomes necessary to do so in order to ascertain the rights of the secured creditor in the general estate. If he does, and it becomes necessary to adjust the liens before his sale, he may institute the necessary proceedings for that purpose in the courts of the United States, or of the state, as he chooses: *Id.*

Bill of Exceptions.

Requirements of—Rulings of Judge.—There is but one mode of bringing upon the record and making a part of it the rulings of a judge during the progress of a trial, or his charge to the jury, and that is by a bill of exceptions allowed and sealed or signed by the judge: *Phœnix Ins. Co.* v. *Lanier*, S. C. U. S., Oct. Term 1877.

The judge's notes do not constitute a bill of exceptions. They are but memoranda from which a formal bill may afterwards be drawn up and sealed: *Id.*

A verdict was returned, and judgment signed on the 14th of November 1874. The transcript exhibited a paper dated November 19th 1874, called an assignment of error, signed by the attorney of the insurance company, and filed on that day, setting forth that in the foregoing record and proceedings various errors appeared, and describing them. The paper appeared to have been served on the plaintiffs' attorney, and on the same day it was endorsed "exceptions overruled.—John Erskine, judge." For what purpose the paper was prepared did not clearly appear: *Held*, that it was impossible to regard it as a bill of exceptions taken or noted at the trial; *Id.*

Bill of Lading. See *Shipping.*

Collateral Warranty. See *Covenant.*

Conflict of Laws. See *Will.*

Constitutional Law.

Municipal Corporation—Subscription to Stock of Railroad Company—Assent of Voters thereto—Provisions of Constitution and Act of Assembly in relation thereto—Election.—The "township aid act" of Missouri authorized subscriptions by townships to the capital stock of railroad companies whenever two-thirds of the qualified voters of the township, voting at an election called for that purpose should vote in favor of the subscription. The constitution of the state prohibited such a subscription "unless two-thirds of the qualified voters of the * * * town, at a regular or special election to be held therein, shall assent thereto." *Held* that the *assent* required by the constitution was obtained if two-thirds of those voting at the prescribed election should vote to that effect; and that the said "township aid act" was constitutional: *County of Cass* v. *Johnson*, S. C. U. S., Oct. Term 1877.

All qualified voters who absent themselves from an election duly called are presumed to assent to the expressed will of the majority of those voting, unless the law providing for the election otherwise declares: *Id.*

CONTRACT. See *Mines and Mining.*

Parol Evidence to vary written—New Consideration.—Verbal agreements between the parties to a written contract, made before or at the time of the execution of the contract, are in general inadmissible to vary its terms or to affect its construction, the rule being that all such verbal agreements are to be considered as merged in the written instrument. But oral agreements subsequently made on a new and valuable consideration and before the breach of the contract, in cases not falling within the Statute of Frauds, stand upon a different footing, as such agreements may, if not within the Statute of Frauds, have the effect to enlarge the time of performance, or may vary any other of its terms, or may waive and discharge it altogether: *Hawkins* v. *The United States*, S. C. U. S., Oct. Term 1877.

Implied promises, or promises in law, exist only when there is no express promise between the parties, *expressum facit cessare tacitum. Id.*

Time, Essence of the Contract—Sale of Contingent Reversionary Interest in Railway Stock—Return of Deposit.—The defendants, on the 6th day of July 1876, sold to the plaintiff by auction a reversion in railway stock, expectant on the decease of a married lady without issue who should attain the age of twenty-one years. The lady was then in her forty-fourth year and had never had any children. The sale was subject to conditions, whereby it was provided that the purchaser should pay a deposit and the purchase be completed on or before the 17th of August then next; "but should the completion of the purchase be delayed from any cause whatever beyond that period, the purchaser is (but without prejudice nevertheless to vendor's rights under the seventh or any other condition of sale) to pay interest on the balance of the purchase-money from that day until the completion of the purchase." By the seventh condition, should the purchaser neglect or fail to comply with any condition, "The deposit money shall be forfeited and the vendor * * * shall be at full liberty to resell the property * * * and the deficiency (if any) arising by such second sale, together with all charges attending the same, shall be made good by the defaulter." There was no express stipulation that time should be of the essence of the contract. The plaintiff at the time of sale paid a deposit of 30*l.* The defendants were not able to complete the sale on or before the 17th of August, and the plaintiff, two days afterwards, brought his action to recover the deposit. The defendants were able and willing to complete the sale at the end of November 1876: *Held*, that under the conditions time was not of the essence of the contract, and the plaintiff was not entitled to recover: *Patrick* v. *Milner*, Law Rep. 2 C. P. D.

CORPORATION. See *Constitutional Law.*

COURT OF CLAIMS.

Jurisdiction of.—Jurisdiction is not conferred upon the Court of Claims to allow mere extra allowances in a case where there is no promise to that effect, either express or implied. Power to hear and determine claims founded upon any law of Congress or upon any regulation of an executive department, or upon any contract express or implied with the

government of the United States, and all claims which may be referred to it by either house of Congress, is vested in the Court of Claims. Mere applications for extra allowance, unsupported by any contract express or implied must be made to Congress, where alone they can be properly entertained: *Hawkins* v. *The United States*, S. C. U. S., Oct. Term 1877.

COURTS. See *Bankruptcy*.

COVENANT.

Collateral Warranty—Breach after Settlement of Deceased Covenantor's Estate—Suit against Heir—Statute of Limitations—Covenant of Married Woman.—A testator dying the owner of a tract of land devised it to his widow, during her life, with remainder in fee to A. and B., in common; such widow marrying C., she and C., by a deed containing a covenant of title, specially binding themselves and their heirs, in stipulated damages, for a breach thereof, jointly conveyed such land to another, who then conveyed it to A.; C. first, and then such widow, dying, D., their child, inherited and received an estate from his father, C.; afterwards, and after the estate of the latter had been finally settled according to law, B., in an action for that purpose against A., obtained a decree settling in himself the title to and the right of possession of the undivided half of such land, thus causing a breach of such covenant of title made by C. and his wife, and for which breach A. brought an action against D. as the heir of C.: *Held*, on demurrer, that the right of action for such breach not having accrued until after the final settlement of C.'s estate, it is not barred, either by such final settlement nor by the provisions of sections 62 and 178 of the Act of June 17th 1852 (2 R. S. 1876, p. 491), "providing for the settlement of decedents' estates," &c.; *Held*, also, that D. is liable, for such breach, in damages not exceeding the amount of estate received by him of C.; *Held*, also, that such covenant is not personal but runs with the land, and a breach thereof is sufficiently shown by an averment of an eviction of A., by B., under a paramount title; *Held*, also, that an averment that A. had been in possession of such land is unnecessary; *Held*, also, that it is unnecessary to aver that D. had had notice of such action by B. against A.; *Held*, also, that the fact that a married woman is not bound, by her covenant, in which her husband joins, in conveying her land, does not release him: *Blair* v. *Allen*, 55 Ind.

CRIMINAL LAW.

Larceny—Indictment—Description of Stolen Property—Evidence.—An indictment charging the defendant with having unlawfully and feloniously stolen, taken and carried away "bank-bills" of a certain denomination, "a more particular description of which bank-bills cannot now be given," of a certain value specified, and the property of a person named, is sufficient on motion to quash: *Hart* v. *The State*, 55 Ind.

On the trial of the defendant upon such indictment, a conviction upon evidence describing the property simply as "bills" is erroneous: *Id.*

The courts of Indiana take judicial notice of the fact that there are classes of notes and bills, other than bank-bills, in circulation as money: *Id.*

False Pretences—Evidence.—C. was convicted of obtaining potatoes

by falsely pretending that he was then in a large way of business, that he was in a position to do a good trade in potatoes, and that he was able to pay for large quantities of potatoes as and when the same might be delivered to him. The evidence that C. had so pretended was the following letter written by him to the prosecutor: "Sir, please send me one truck of Regents and one truck of Rocks as samples, at your prices named in your letter; let them be good quality, then I am sure a good trade will be done for both of us. I will remit you cash on arrival of goods and invoice. Yours, &c. P. S. I may say if you use me well I shall be a good customer. An answer will oblige, saying when they are put on." *Held*, affirming the conviction, that the words of the letter were fairly and reasonably capable of a construction supporting the pretences charged, and that it was a question for the jury, whether the writer intended the prosecutor to put that construction upon them: *The Queen* v. *Cooper*, C. C. R., Law Rep. 2 Q. B. D.

CUSTOM. See *Mines and Mining; Sale.*

DAMAGES. See *Railroad.*

DEBTOR AND CREDITOR.

Fraud—Assignment of Contract.—If the intent of the assignment of a contract be to defraud the creditors of the assignor, the assignee can take nothing thereby, and is not entitled, as against the creditors, to withhold from the proceeds of the execution of the contract the amount he may have paid for the assignment: *Chapman* v. *Ransom*, 44 Iowa.

Conveyance—When Fraudulent—Lien of Judgment.—Where after the filing of an opinion in the Supreme Court, affirming a judgment of the court below, the judgment debtor conveyed a large amount of real estate to his son and grandchildren, in consideration of love and affection and a small nominal consideration expressed, and it did not appear that any consideration was actually paid, it was *held* that such conveyance was fraudulent and would not defeat the lien of the judgment: *Potter et al.* v. *Phillips et al.*, 44 Iowa.

A fraudulent grantor is not a necessary party to an action against his grantees to set aside a conveyance alleged to be in fraud of his creditors: *Id.*

ELECTION. See *Constitutional Law.*

EVIDENCE. See *Contract; Criminal Law; Will.*

Written Instrument—Parol Evidence—Surrounding Circumstances.—Although a written agreement cannot be varied (by addition or subtraction) by proof of the circumstances out of which it grew and which surrounded its adoption, yet such circumstances are constantly resorted to for the purpose of ascertaining the subject-matter and the standpoint of the parties in relation thereto. Without some knowledge derived from such evidence it would be impossible to comprehend the meaning of an instrument or the effect to be given to the words of which it is composed. This preliminary knowledge is as indispensable as that of the language in which the instrument is written. A reference to the actual condition of things at the time, as they appeared to the parties themselves, is often necessary to prevent the court, in construing their lan-

guage, from falling into mistakes and even absurdities: *Reed* v. *Merchants' Mutual Ins. Co.*, S. C. U. S., Oct. Term 1877.

The clause in a policy, "the risk to be suspended while vessel is at Baker's Island loading," construed to mean, "while the vessel is at Baker's Island *for the purpose of loading*: *Id.*

Discovery—Privileged Documents—Report of Examination of Plaintiff by Medical Men.—Where, on an action against a railway company to recover damages for injuries sustained by the defendants' negligence, the plaintiff is examined by medical men employed on the defendants' behalf, the reports sent by the medical men to the defendants are privileged from inspection, provided that the examination and reports were procured by the defendants' solicitor, or at his instance, for the purpose of enabling him to give advice to the defendants with reference to the action, and of assisting him generally in the conduct of the legal proceedings: *Friend* v. *The London, Chatham & Dover Railway Co.*, Law Rep. C. A., 2 Ex. D.

FRAUD. See *Debtor and Creditor.*

GOVERNMENT. See *Officer.*

HOMESTEAD.

Dower—Survivor must elect.—The surviving husband or wife cannot enjoy at the same time both dower or curtesy and homestead in the real estate of decedent, and must elect which of those rights he or she will take: *Butterfield* v. *Wicks et al.*, 44 Iowa.

The continued occupancy of the property by the husband, after the death of the wife who was the owner, will be regarded as an election to hold it as a homestead: *Id.*

The right of occupancy and possession by the survivor confers no title to the property, and he cannot execute a valid mortgage thereon: *Id.*

HUSBAND AND WIFE. See *Govenant; Homestead.*

INSURANCE. See *Evidence.*

Partial Loss—Cost of Repairs—Allowance of one-third New for Old—Suing and Laboring Clause—Salvage Expenses.—The defendant insured the plaintiff for 1200*l.* upon a ship valued at 2600*l.* The ship encountering rough weather suffered sea damage and incurred salvage expenses to the amount of 519*l.* She was repaired, and the result of the repairs, the ship being an old one, was to make her more valuable when repaired than she was at the time of the insurance. The defendant, in an action on the policy to recover for a partial loss, contended that he could not be liable for more than a total loss with benefit of salvage, deducting from such salvage the ship's proportion of salvage and general average expenses, and that the depreciation in value of the ship by sea damage, not the cost of the repairs, was the measure of the partial loss: *Held*, that the cost of repair, making the usual deduction of one-third new for old, was the measure of the loss, if the ship-owner elected to repair, and consequently that the assured was entitled to recover such cost of repair up to the amount insured for, even although the loss so estimated might amount to more than a total loss with benefit of salvage: but *Held*, that the assured could not recover under the suing

and laboring clause in respect of a proportion of the salvage expenses over and above the 1200*l*, because the damage done to the ship being so great as already to exhaust the policy, and the assured not having abandoned, the salvage expenses did not enure to the benefit of the underwriter: *Lohre* v. *Aitchison*, Law Rep. 2 Q. B. D.

Joint Debtors.

Judgment—Enforcement—In an action against joint defendants the judgment plaintiff may enforce his judgment to its full extent against either of them at his option: *Palmer* v. *Stacy et al.*, 44 Iowa.

Where a judgment was obtained against a town for injuries caused by the negligence of the co-defendant, the plaintiff is not compelled to resort to the property of the latter for the satisfaction of the judgment: *Id.*

He may ask a writ of mandamus to compel the levy of a tax for the payment of the judgment. That the co-defendant has property subject to execution does not afford such a remedy as will prevent the granting of the writ: *Id.*

It is no objection to the granting of the writ that it will promote a circuity of actions: *Id.*

Judgment. See *Debtor and Creditor.*

Landlord and Tenant.

Liability of Landlord for Injury happening to Stranger during Tenancy—Liability of Landlord for defective repair of demised House—Negligence.—A landlord is liable for an injury to a stranger by the defective repair of demised premises only when he has contracted with the tenant to repair or when he has been guilty of misfeasance, as, for instance, in letting the premises in a ruinous condition: in all other cases he is exempt from responsibility for accidents happening to strangers during the tenancy. The defendants let to F. a house by an agreement in writing, by which F. agreed "to do all necessary repairs to the said premises except main walls, roof and main timbers." There was no agreement by the defendants to repair, and the house was in good condition at the time of letting it. Owing to the defendants' negligence in not repairing a part of the main walls, a chimney-pot, during the tenancy of F., fell upon the plaintiff, who was a servant of F., and injured him: *Held*, that the plaintiff was not entitled to recover compensation from the defendants for the injury sustained by him: *Nelson* v. *The Liverpool Brewery Co.*, Law Rep. 2 C. P. D.

Master and Servant. See *Railroad.*

Licensee—Invitation—Concealed Danger.—A barge of the defendant being unlawfully navigated on the river T., the plaintiff, a waterman, complained to the man in charge, who referred him to R., the defendant's foreman; the plaintiff went to the defendant's wharf in order to speak to R., and whilst he was there a bale of goods, by the negligence of the defendant's servants, fell upon him and injured him; the plaintiff had had no warning that the bale might fall: *Held*, that the plaintiff was entitled to maintain an action for the injuries sustained by him. *Corby* v. *Hill*, 4 C. B. N. S. 556; 27 L. J. C. P. 318, and *Indermaur* v.

Dames, Law Rep 1 C. P. 274; and on appeal, Law Rep. 2 C. P. 311, followed: *White* v. *France*, Law Rep. 2 C. P. D.

Negligence—Sub-contractor under Railway Company—Common Employment.—The plaintiff, a workman in the employ of a contractor engaged by the defendants, had to work in a dark tunnel rendered dangerous by the passing of trains. After he had been working a fortnight he was injured by a passing train. The jury found that the defendants in not adopting any precautions for the protection of the plaintiff had been guilty of negligence. *Held*, by the majority of the court of appeal (COCKBURN, C. J., MELLOR and GROVE, JJ), reversing the decision of the Court of Exchequer, that the plaintiff having continued in his employment with full knowledge, could not make the defendants liable for an injury arising from danger to which he voluntarily exposed himself: *Held*, by MELLISH and BAGGALLAY, L. JJ., dissenting, that the plaintiff, as servant to the contractor and not to the defendants, had entered into no contract with the latter which would modify the ordinary duty of those who carry on a dangerous business to take reasonable precaution that no one should suffer personal injury from the manner in which it is carried on; and that no such contract should be inferred from the plaintiff remaining in his employment: *Woodley* v. *The Metropolitan District Railway Co.*, Law Rep. C. A., 2 Ex. D.

Negligence—Scope of Employment.—The defendant's carman, without his master's permission, and for a purpose of his own, wholly unconnected with his master's business, took out the defendant's horse and cart, and on his way home negligently ran against the plaintiff's cab and damaged it. The course of the employment of the carman was that, with the defendant's horse and cart, he took out beer to customers of the defendant (a brewer), and in returning to the brewery he called for empty casks wherever they would be likely to be collected, for which he received from the defendant a gratuity of 1*d.* each. At the time of the accident the carman had with him two casks which he had picked up on his return journey at a public house which his master supplied, and for which he afterwards received the customary 1*d.* *Held*, that the carman had not re-entered upon his ordinary duties at the time of the accident, and therefore the master was not liable: *Rayner* v. *Mitchell*, Law Rep. 2 C. P. D.

MINES AND MINING.

Contract—Removal of Pillars—Custom.—The lease of a coal mine stipulated that the lessee was to leave the mine in good working condition at the expiration of the lease: *Held*, that he could not remove the supports and pillars from the mine, even after the supply of coal was exhausted: *Randolph et al.* v. *Halden et al.*, 44 Iowa.

A contract cannot be controlled by a custom which the parties have expressly excluded or which they have excluded by necessary implication: *Id.*

MUNICIPAL CORPORATION. See *Constitutional Law; Joint Debtors.*

Annexation of Territory—County Board—Power of—Tax—Injunction.—Where under the provisions of sections 85 and 86 (1 Rev. Stats. 1876, p. 311) of the Act of March 14th 1867, providing "for the incor-

poration of cities, &c., the common council of a city has filed its petition with the proper county board, asking that certain described lands, not platted, lying contiguous to such city, be annexed thereto, to which it is averred that the owner will not consent, such board has no power to order the annexation of a part only of such lands, but must grant or refuse the prayer of such petition as a whole: *City of Peru et al.* v. *Bearss et al.*, 55 Ind.

An order of such county board, annexing to such city part only of such lands, is inoperative and void, but is one from which no appeal is authorized by law: *Id.*

Where a city has assessed a tax for municipal purposes upon lands so annexed, its collection may be enjoined and such assessment cancelled, in an action therefor by the owners: *Id.*

NEGLIGENCE. See *Evidence; Landlord and Tenant; Master and Servant; Railroad.*

NEW TRIAL. See *Verdict.*

NOTICE. See *Bailment.*

OFFICER.

Extent of Authority is matter of Law so as to give Notice to Persons dealing with him.—Individuals as well as courts must take notice of the extent of the authority conferred by law upon a person acting in an official capacity, and the rule applies in such a case that ignorance of the law furnishes no excuse for any mistake or wrongful act: *Hawkins* v. *The United States*, S. C. U. S., Oct. Term 1877.

Different rules prevail in respect to the acts and declarations of public agents from those which ordinarily govern in the case of mere private agents. Principals in the latter category are in many cases bound by the acts and declarations of their agents, even where the act or declaration was done or made without any authority, if it appear that the act was done or the declaration was made by the agent in the course of his regular employment, but the government or public authority is not bound in such a case, unless it manifestly appears that the agent was acting within the scope of his authority, or that he had been held out as having authority to do the act or make the declaration for or on behalf of the public authorities: *Id.*

PATENT.

Prior Invention—Notice.—Patentees or assignees in a suit for infringement, where the patent described in the bill of complaint is introduced in evidence, are presumed to be the original and first inventors of the described improvement, and if they have proved the alleged infringement the burden of proof is cast upon the respondents to show that the patent is invalid, unless the patent is materially defective in form: *Roemer* v. *Simon et al.*, S. C. U. S., Oct. Term 1877.

Parties, defendants, sued as infringers, are not allowed, in an action at law, to set up the defence of a prior invention, knowledge, or use of the thing patented, unless they have given notice of such defence in writing, thirty days before the trial, and have stated in that notice "the names of the patentees and the dates of their patents alleged to have been invented, and the names and residences of the persons alleged to

have invented or to have had the prior knowledge of the thing patented, and where and by whom it had been used: *Id.*

PLEADING.

Bill of Review—Demurrer—Rehearing, when granted.—The decision of the court upon the issues of fact, so far as they depend upon the proofs, are conclusive on a bill of review: *Buffington* v. *Harvey*, S. C. U. S., Oct. Term 1877.

A general demurrer must be overruled if the pleading demurred to contain any good ground to support it: *Id.*

The granting of a rehearing is always in the sound discretion of the court, and, therefore, granting or refusing it furnishes no ground of appeal: *Id.*

RAILROAD. See *Bailment.*

Negligence—Rate of Speed.—While unusual speed of railway trains does not of itself constitute negligence, yet it may be considered with other circumstances in determining the degree of care exercised: *Artz* v. *The C., R. I. & P. Railroad Co.*, 44 Iowa.

The questions whether or not there were obstructions obscuring the sight of an approaching train to one about to drive upon the track, and whether or not plaintiff was using his senses to avoid danger, are questions of fact for the jury: *Id.*

Liability for Malicious Acts of Employees—Master and Servant—Damages—Excessive Verdict.—A railway company is liable for the malicious and criminal acts of their employees toward passengers while they are executing what they suppose to be the orders of the company, even though the orders do not in fact contemplate such acts: *McKinlay* v. *C. & N. W. Railroad Co.*, 44 Iowa.

Mental anguish arising from the nature and character of the assault is a proper element of compensatory damages, and the outrage and indignity which have accompanied an injury are to be estimated, as well as the physical effects of the injury, even in cases where exemplary damages do not lie: *Id.*

While in actions for damages for personal injuries, the court is disinclined to disturb the verdict of the jury on the ground that it is excessive, yet it will not permit a verdict to stand which appears to be the result of passion or prejudice: *Id.*

Where a passenger seeking to enter a car reserved for ladies was ejected with violence, whereby he suffered severe bodily injuries recovered a judgment against the railway company for $12,000, it was *held* that the amount should be reduced to $7000: *Id.*

SALE.

Of Goods—Vendor's Lien—Usage—Bankruptcy.—By the usage of the iron trade warrants for goods "deliverable (F. O. B.) to A. B., or their assigns, by endorsement hereon," are considered to pass to the holders for value free from any vendor's lien. The P. B. Company, manufacturers of steel rails, contracted with S. & Co., iron merchants, for the sale of a quantity of rails to be rolled at their works and to be

delivered at intervals, payment to be made as to three-fifths at three days' sight, and as to two-fifths by buyers' acceptances at four months. On the completion of each portion of goods a warrant for the same in the above form was sent to S. & Co., with an invoice and drafts for the purchase-money, and the goods referred to in the warrants were stacked at the works. In the meantime S. & Co. pledged the several warrants, and endorsed the same to the plaintiffs. Before the contract was completed, when only part of the goods were paid for, S. & Co. became bankrupt, and their acceptances were dishonored. At that time part of the goods had been dispatched in wagons sent by order of S. & Co., and were stored in a railway company's warehouse, addressed to the agents of S. & Co, and part remained stacked at the works: *Held*, that, by the usage of the iron trade, as well as by the intention of the parties as shown by their course of dealing, the plaintiffs, as holders for value of the warrants, were entitled to the goods free from any vendor's lien; *Held*, also, that even had the vendors been able to claim a lien on the undelivered goods, the transit was at an end as regarded those stored in the warehouse, and their right was gone; *Held*, also, that the contract was apportionable, and that the vendors could not in any event have claimed any lien on that portion of the goods which had been fully paid for: *Merchant Banking Co. of London* v. *Phœnix Bessemer Steel Co.*, Law Rep. 5 Ch. D. (M. R.).

SHIPPING. See *Insurance.*

Carriage of Merchandise— Warranty of Seaworthiness—Ship Seaworthy whilst lying in Port of Loading, but becoming Unseaworthy at time of sailing on Voyage with Cargo on board.—The implied warranty of seaworthiness into which the owner of a ship enters with the owner of her cargo, attaches at the time when the perils of the intended voyage commence, that is, when she sets sail with the cargo on board for her port of destination; and this warranty is broken if she is then unfit to encounter these perils, although she may have been seaworthy whilst lying in the port of loading, and also at the times of starting from her anchorage for and arriving at the place of loading appointed by the charterer, and of commencing to take on board her cargo. The defendants were owners of a vessel, and chartered her for a voyage to D., from the port of S., where she was then lying in a seaworthy condition. Pursuant to the terms of the charter-party, and by the orders of the plaintiff, the vessel proceeded to a wharf situate in the port of S., and there loaded on board a cargo of cement belonging to the plaintiff. At the time she commenced taking in the cargo she was seaworthy; but by the time of setting sail on her voyage she had from some unknown cause become unseaworthy. The defendants were not guilty of negligence in sending her to sea in the condition in which she then was. Soon after starting from S. she began to leak; but the wind being fair for the voyage to D., the master resolved to keep his course for D., and he was not guilty of negligence in not returning to S. The vessel did not reach D., but foundered at sea, and the plaintiff's cargo of cement was totally lost: *Held*, that the warranty of seaworthiness implied by law upon entering into the charter-party had been broken, and that the plaintiff was enti-

tled to recover the value of the cargo shipped by him on board the vessel: *Cohn* v. *Davidson*, Law Rep. 2 Q. B. D.

Bill of Lading—Liability of Shipowner—"Not accountable for Rust, Leakage or Breakage."—The defendants caused to be shipped on board the plaintiff's vessel bales of palm baskets and barrels of oil, under a bill of lading containing the clause, "not accountable for rust, leakage or breakage." During the voyage some of the oil escaped from the barrels and damaged the palm baskets: *Held*, that the clause in the bill of lading, exempting the plaintiff from responsibility for "leakage," did not extend to damage caused by the oil which had escaped from the barrels, and that the plaintiff was liable to compensate the defendants for the injury done to the palm baskets: *Thrift* v. *Youle & Co.*, Law Rep. 2 C. P. D.

SLANDER.

Words not Actionable per se—How made Actionable—Pleading.—Words, not actionable *per se*, spoken of the chastity of a woman, may be shown to have been spoken in an actionable sense, by an averment, either 1st, that they were *intended*, when used, to impute to her a want of chastity, or 2d, that, in the place where and at the time when used, their common meaning was such as to render them, in that locality, actionable *per se*: *Emmerson* v. *Marvel*, 55 Ind.

Words not actionable *per se*, set out in a complaint for slander, with an averment, that, in the place where and at the time when used, they had an actionable meaning, are, *prima facie*, presumed to have been so intended and understood, without its being so alleged: *Id.*

Where, in an action for slander, for the speaking of words not actionable *per se*, the complaint contains a sufficient colloquium and innuendo, and the necessary averment, that, at the place where and at the time when spoken, they had a provincial, actionable meaning, but does not name such place, such omission does not render it bad on motion in arrest of judgment: *Id.*

That words, actionable *per se*, were spoken in the hearing of a third person need not be alleged in the complaint, but must be proved on the trial, in an action for slander: *Id.*

The statute of Indiana, authorizing an action for slander for words charging a woman with whoredom, is not unconstitutional for want of a proper title: *Id.*

STOPPAGE IN TRANSITU. See *Sale*.

TAX. See *Municipal Corporation*.

TENANT FOR LIFE.

Repairs—Act of God—Waste—Timber.—Tenant for life is bound to keep up improvements, unless destroyed by act of God; but where they are so destroyed he has no right to cut timber to replace them, or to replace them out of profits and reimburse himself by sale of the timber. In either case it is waste: *Miller* v. *Shields*, 55 Ind.

The tenant of an estate for life has a right to take, of the timber growing thereon, sufficient to make all necessary repairs which he, as such tenant, is bound to make; but, unless it is clearly the most economical mode of making such repairs, he has no right to exchange it for lumber with which to make such repairs: *Id.*

That the tenant of an estate for life, at his own expense, has made valuable improvements thereon, which he was not bound to make, is no ground of defence or recoupment in an action against him, by the reversioner, for waste in selling the timber growing thereon: *Id.*

TIME. See *Contract*

TOWN. See *Joint Debtors.*

TRUST AND TRUSTEE.

Office of Trustee—Nature of Duties.—The office of a trustee is important to the community at large, and frequently most so to those least able to take care of themselves. It is one of confidence. The law regards the incumbent with jealous scrutiny, and frowns sternly at the slightest attempt to pervert his powers and duties for his own benefit. The tenant cannot deny the title of his landlord. *A multo fortiori*, ought not the trustee to be permitted to deny that of his beneficiary: *Union Pacific Railroad Co.* v. *Durant*, S. C. U. S., Oct. Term 1877.

USAGE. See *Mines and Mining; Sale.*

VERDICT. See *Railroad.*

Reduction of Amount.—Where the verdict in an action for damages is deemed by the court excessive, it may impose upon the successful party the alternative of accepting a reduced amount, or of submitting to a new trial: *Noel* v. *Dubuque, Bellevue & Mississippi R. Co.*, 44 Iowa.

Upon the return of a verdict the court ordered the amount to be reduced, but refused to grant a new trial, upon the refusal of the successful party to accept the amount named, whereupon it was *held* that the Supreme Court might remand the case with directions that the party recovering be allowed to accept the sum first fixed by the court, or that, in the event of his refusal, the verdict be set aside: *Id.*

WASTE. See *Tenant for Life.*

WILL.

Law of Place—Intention of Testator as to Execution—Parol Evidence of.—Though the last will of a testator may have been executed and attested in another state, yet, if he die while domiciled in this state, the law of the latter must be applied by her courts in determining whether such will has been duly executed: *Patterson et al.* v. *Ransom*, 55 Ind.

The execution of his last will, by the testator, having been attested by but one witness, such testator afterwards, at a different place, and in the absence of such witness, executed an endorsement upon the back of such will, reading, "The within is the basis on which I desire to have my affairs disposed of, should no other will be made by me," which endorsement was attested by another witness, to whom its contents had been made known, and the signatures to such will exhibited, by such testator: *Held*, in an action to contest the validity and resist the probate of such will, that it had not been executed in the presence of two witnesses according to law and is therefore invalid; *Held*, also, that it can not be established by parol evidence, that the signature of such witness, to such endorsement, was intended by the testator, and executed by such witness, as an attesting of such will: *Id.*